IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

JUDGMENT

Satish Chandra & Anr.

Vs.

Panchayat Shri Digamber Jain Mandir & Ors.

D.B. Civil Special Appeal No. 51/1993
in
S.B. Civil Regular First Appeal No. 150/1991

Date of order :: July 19, 2007

PRESENT
HON'BLE MR.JUSTICE R.C. GANDHI.
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Anil Mehta for the appellants

(PER HON'BLE MR. GANDHI, J)

1. This appeal has been preferred under Section 18 of the Rajasthan High Court Ordinance, 1949 against the order dated 23.04.1993 passed by the learned Single Judge in S.B. Civil Regular First Appeal No. 150/1991, whereby the application for restoration of the appeal has been dismissed.

2. The Civil First Appeal No. 150/1991 was listed before the learned Single Judge on 17.03.1993. On that day, neither the learned counsel for the appellant nor his client was present in the court. The appeal came to be dismissed by the learned Single Judge vide order dated 17.03.1993. The appellant filed an application for restoration of the appeal within the statutory period. Learned Single Judge dismissed the said restoration application vide order dated 23.04.1993 observing that no good ground and sufficient cause is made out by the learned counsel for the appellant for his non-appearance before the appellate court at the time of dismissal of the appeal in default of appearance.

3. Notices were issued to the respondents. Respondent No. 1 has been served. An application was filed by the appellant for dispensing with the service of the other respondents. The said application has been allowed and the service of the other respondents has been dispensed with. Respondent No. 1 has not come forward personally or by filing cross-objections to oppose the appeal of the appellant. Learned counsel for the appellant has submitted that he submitted before the learned Single Judge at the time of hearing that he could not appear before the court as he was busy in some other court. It so happened because his client had some other unavoidable work at home and he

permitted him not to appear before the court on the date fixed in the appeal and undertook to appear on his behalf in the case before the court. The learned Single Judge has not taken notice of it.

4. Learned counsel for the appellant is prepared to file an affidavit to the effect that he permitted his client not to come and appear on that date and undertook to appear on his behalf before the court. We accept this reason. We feel that the learned counsel has made out sufficient cause for his non-appearance.

5. Consequently, this appeal is allowed, both the orders dated 17.03.1993 and 23.04.1993 are set aside and the first appeal is restored. Registry is directed to list S.B. Civil First Appeal No. 150/1991 before the concerned court.

(Dr.VINEET KOTHARI),J. **(R.C. GANDHI),J.**

Pramod